

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JOSEPH GREENE

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known) _____

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. SECTION 1692

Brief description of cause:
Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

Explanation:

5/6/11

DATE

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 274 W. Chapel Rd., Asheville, NC 28803

Address of Defendant: 507 Prudential Rd., Harsham, PA 19044

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases 15 U.S.C. § 1692
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 5/6/11 Craig Thor Kimmel 57108
Attorney-at-Law Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 5/6/11 Craig Thor Kimmel 57108
Attorney-at-Law Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Joseph Greene : CIVIL ACTION
v. :
NCO Financial Systems, Inc. : NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ☒

<u>5/6/11</u>	<u>Craig Thor Kimmel</u>	<u>Joseph Greene</u>
Date	Attorney-at-law	Attorney for
<u>215-540-8888</u>	<u>877-788-2864</u>	<u>Kimmel@creditlaw.com</u>
Telephone	FAX Number	E-Mail Address

COMPLAINT

INTRODUCTION

JURISDICTION AND VENUE

PLAINTIFF'S COMPLAINT

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

6. Plaintiff is a natural person residing in Ashville, North Carolina, 28803.

7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company with its corporate headquarters located at 507 Prudential Road, Horsham, Pennsylvania, 19044-2308.

9. Defendant is a debt collector as that term is defined by 15 U.S.C. § 1692a(6), and sought to collect a consumer debt from Plaintiff.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

12. In particular, the FDCPA broadly enumerates several practices considered contrary to its stated purpose, and forbids debt collectors from taking such action. The substantive heart of the FDCPA lies in three broad prohibitions. First, a "debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any

1 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
2 collector may not use any false, deceptive, or misleading representation or means in connection
3 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
4 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
5 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
6 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
7 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
8 connection with the collection of a debt.
9

10 13. In enacting the FDCPA, the United States Congress found that “[t]here is
11 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
12 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
13 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
14 additionally found existing laws and procedures for redressing debt collection injuries to be
15 inadequate to protect consumers. 15 U.S.C. § 1692b.

16 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
17 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
18 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
19 collection practices are not competitively disadvantaged, and to promote consistent State action
20 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.
21

22 FACTUAL ALLEGATIONS

23 15. At all pertinent times hereto, Defendant was hired to collect a consumer debt
24 originally belonging to Ford Motor for an auto loan.
25

1 16. The alleged debt at issue arose out of transactions, which were primarily for
2 personal, family, or household purposes.

3 17. By way of background, in 2004, Plaintiff made payment arrangements with
4 Defendant to pay \$50.00 a month on a collection account.

5 18. Plaintiff made payments monthly payments of \$50.00 to Defendant.

6 19. Beginning in or around 2009 and continuing through September 2010, Defendant
7 continuously and repeatedly contacted Plaintiff on his home telephone seeking and demanding
8 payment of an alleged debt.

9 20. Defendant placed almost daily collection calls to Plaintiff seeking payment on the
10 alleged collection account even though Plaintiff had been making the \$50.00 monthly payments.

11 21. Plaintiff is an eighty-year-old man, suffering from a brain tumor, and his sole
12 source of income is social security.

13 22. Plaintiff's daughters contacted Defendant regarding this matter and provided
14 Defendant with medical documentation regarding Plaintiff's medical condition.

15 23. After receiving this information, Defendant asked one of Plaintiff's daughters if
16 she could pay this debt on behalf of her father.

17 24. Defendant continued its collection efforts by contacting Plaintiff at least four (4)
18 to five (5) times a week.

19 25. Most recently, on September 20, 2010, Defendant contacted Plaintiff on his home
20 telephone.

21 26. In addition to continuously contacting Plaintiff on his home telephone, Defendant
22 also left voicemail messages on Plaintiff's home answering machine demanding that Plaintiff
23 call "Singae Batab" in order to make payment arrangements.
24
25

1 27. Defendant's sole purpose in contacting Plaintiff multiple times every week since
2 2009 was to harass Plaintiff.

3 28. Defendant's actions in attempting to collect the alleged debt were harassing,
4 abusive and highly deceptive.

5 CONSTRUCTION OF APPLICABLE LAW

6 29. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
7 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer
8 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.
9 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
10 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
11 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

12 30. The FDCPA is a remedial statute, and therefore must be construed liberally in
13 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
14 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
15 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the
16 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
17 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
18 2002).

19 31. The FDCPA is to be interpreted in accordance with the "least sophisticated"
20 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano
21 v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,
22 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for
23 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,
24
25

1 and the fact that a false statement may be obviously false to those who are trained and
 2 experienced does not change its character, nor take away its power to deceive others less
 3 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it
 4 ensures protection of all consumers, even naive and trusting, against deceptive collection
 5 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
 6 collection notices. Clomon, 988 F. 2d at 1318.

7
 8 **COUNT I**
 9 **DEFENDANT VIOLATED THE**
 10 **FAIR DEBT COLLECTION PRACTICES ACT**

11 32. Defendant violated the FDCPA based on the following:

- 12 a. Defendant violated §1692 generally;
- 13 b. Defendant violated §1692d of the FDCPA by harassing Plaintiff in connection
 14 with the collection of an alleged debt;
- 15 c. Defendant violated §1692d(5) of the FDCPA, when it caused the Plaintiff's
 16 telephone to ring repeatedly or continuously with the intent to harass, annoy or
 17 abuse Plaintiff;
- 18 d. Defendant violated §1692e of the FDCPA by using false, deceptive, or
 19 misleading representations or means in connection with the collection of a
 20 debt;
- 21 e. Defendant violated §1692e(10) of the FDCPA by using false representations
 22 or deceptive means to collect or attempt to collect a debt;
- 23 f. Defendant violated §1692f of the FDCPA by using unfair and unconscionable
 24 means with Plaintiff to collect or attempt to collect a debt; and
- 25 g. Defendant acted in an otherwise deceptive, unfair and unconscionable manner
 and failed to comply with the FDCPA.

1 33. As a direct and proximate result of one or more or all of the statutory violations
2 above, Plaintiff has suffered emotional distress.

3 WHEREFORE, Plaintiff, JOSEPH GREENE, respectfully requests judgment be entered
4 against Defendant, NCO FINANCIAL SYSTEMS, INC., for the following:

- 5 a. Declaratory judgment that Defendant's conduct violated the Fair Debt
6 Collection Practices Act,
7
8 b. Statutory damages pursuant to the Fair Debt Collection Practices Act, 15
9 U.S.C. § 1692k,
10
11 c. Actual damages,
12
13 d. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection
14 Practices Act, 15 U.S.C. § 1692k
15
16 e. Any other relief that this Honorable Court deems appropriate.

17 **DEMAND FOR JURY TRIAL**

18 PLEASE TAKE NOTICE that Plaintiff, JOSEPH GREENE, demands a jury trial in this
19 case.

20 RESPECTFULLY SUBMITTED,

21 DATED: 5/6/11

22 KIMMEL & SILVERMAN, P.C.

23 By: 

24 Craig Thor Kimmel
25 Attorney ID #57100
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